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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of the
GOLDEN STATE WATER CO.
(U133W) for authority to increase rates
charged for water service in its Region I
Customer Service Areas per seven
applications, all commonly filed on
January 5, 2007.

A.07-01-009
(Filed January 5, 2007)

And Related Matters.

A.07-01-010
A.07-01-011
A.07-01-012
A.07-01-013
A.07-01-014
A.07-01-015
(Filed January 5, 2007)

MOTION OF THE DIVISION OF RATEPAYER ADVOCATES FOR ADMISSION INTO EVIDENCE

I. INTRODUCTION

On June 29, 2007, Administrative Law Judge (ALJ) Regina DeAngelis directed Division of Ratepayer Advocates (DRA) to file a motion for the admission into evidence the following four items:

- Exhibits DRA (ALL) -10 and -16;
- A diagram of Overhead Allocation; and
- A “GSWC Overhead Study” work paper.

Pursuant to Rules 13.7 and 13.10 of the Commission Rules of Practice and Procedure (Rule), the Division of Ratepayer Advocates (DRA) hereby moves for admission of the above-stated items. In accordance with Rule 13.7, subsection (d), DRA witness M. Aslam certified under oath that he prepared DRA (ALL) -10 and -16 and the

diagram in question. Further, the GSWC work paper in question is a true and correct copy of the same that is part of one of the three CD-ROMs which were filed with the Application in this proceeding.

For purposes of impeachment, DRA (ALL) -10 and -16 show that GSWC's use of the maximum demand graph and the cost/benefit model, respectively, are erroneous, skewed in favor of GSWC, and consequently lack credibility. The Commission admitted an engineering diagram, Exhibit GSWC (ALL)-34, which GSWC presented for the first time, at the last minute, and on the last day of hearing, July 2, 2007, because it was used for impeachment purposes.¹ Analogously, DRA (ALL) -10 and -16 should be admitted because the Commission deserves to have a full and complete record.

As for the diagram, this is offered only as "demonstrative evidence" to illustrate and clarify DRA's position regarding Overhead Allocation. As DRA witness M. Aslam testified, Overhead Allocation is a complex issue and his diagram is meant to assist the Commission in understanding his analyses.² DRA requests that the Commission admit its diagram as illustrative and not to prove the truth of the matters asserted therein.

Presumably, the "GSWC Overhead Study" is already part of the record, because it was filed with the GSWC Application in this proceeding. However, to keep the record clear and for ease of reference, DRA requests that this work paper be given an identification number next in order.

II. ARGUMENTS AND AUTHORITIES

A. DRA may impeach GSWC's claim of maximum day demand at Los Osos as inaccurate and/or biased.

According to GSWC witness E. Gisler, he used a California Water Works Standards graph to determine a "maximum day demand" at Los Osos of "750 GPM," by

¹ See TR at 936, lls. 11-17 P. Schmiede/ GSWC (claiming GSWC (ALL) -34 used for impeachment).

² TR at 878, lls. 8-14, M. Aslam/DRA ("I think that [the diagram] will help this Court to understand the matter . . . a little better.")

plotting on the graph for “599 customers” at “70 degrees Fahrenheit.”³ Under oath, DRA witness M. Aslam certified that he plotted on the same graph the same factors as GSWC had used — 599 customers at 70 degrees Fahrenheit — but arrived at a significantly lesser maximum day demand at Los Osos of “655 GPM.”⁴

According to section 780 of the California Evidence Code, DRA is entitled to show “any matter that has any tendency in reason to prove or disprove the truthfulness of [a witness’s] testimony. . . .” In this case, DRA is offering evidence to show bias, interest, or motive in GSWC’s testimony and to prove that GSWC’s claim of “750 GPM” is contradicted by inconsistent facts. Although DRA offered DRA (ALL) -10 for impeachment of Mr. Gisler’s rebuttal, ALJ DeAngelis directed DRA to file this motion.

No preliminary disclosure of impeaching evidence is required.⁵ Just as when GSWC offered GSWC (ALL) -34, the engineering diagram, for impeachment of Mr. Aslam without any preliminary disclosure, DRA does not have to disclose to GSWC Exhibit DRA (ALL) -10 before impeaching Mr. Gisler with it.⁶

Second, Mr. Gisler first presented the graph at issue in his rebuttal testimony. This is contrary to the Rate Case Plan’s legal requirement. GSWC must present with their GRC application all their supporting data, instead of withholding key information until the rebuttal phase after seeing DRA’s testimony. If GSWC had presented Mr. Gisler’s Exhibit 8 with its Application as required, most likely DRA would have been able to disclose DRA (ALL) -10 in advance of the hearing, and this issue could have been settled during formal negotiations. However, GSWC’s surprise tactics foreclosed that

³ TR. at 792, lls 15–27 (E. Gisler/GSWC) and Ex. 22 at 62, lls 24 and 26 *ref* attached Ex. 7(E. Gisler Rebuttal). While the chart at Ex. 7 was previously included in GSWC (LO) -1 work papers at Sheet 152, the factors plotted in that chart were unexplained, unsupported, and inconsistent with the present Ex. 7. It was only after seeing DRA’s Reports, GSWC changed the inputs resulting in the present Ex. 7. This will be fully explained in DRA’s Opening Brief.

⁴ TR. at 875, lls 16–27 and DRA (ALL) -10, M. Aslam/DRA.

⁵ See Cal. Evid. Code sec. 769.

⁶ See *supra* note 1 above for GSWC reliance on impeachment to admit GSWC (ALL) -34.

option. GSWC should not gain any advantage from such unlawful practice which would result if DRA (ALL) -10, as well as DRA (ALL) -16, were excluded.

Therefore, DRA requests that DRA (ALL) -10 be admitted into evidence as part of the record. The Commission deserves a full and complete record, which would be thwarted if this DRA Exhibit were excluded. GSWC cannot claim lack of fairness when it fails to make a complete evidentiary showing in its Application contrary to the Rate Case Plan. As a matter of due process and fundamental fairness, DRA (ALL) -10 should be admitted to impeach GSWC's new and belated rebuttal testimony.

B. DRA may impeach GSWC's use of the cost/benefit model as unsupported and biased.

DRA (ALL) -16 is based on the cost/benefit model that GSWC used to justify constructing the Rosina Nitrate Treatment/Blending Plant instead of drilling a new well.⁷ DRA's Exhibit shows that GSWC skewed the cost/benefit model (which Mr. Gisler's Rebuttal references as Exhibit 8) to support construction of the new plant. Specifically, in "Scenario 2" of the GSWC cost/benefit model (Exhibit 8), GSWC used a figure of "\$1,875,000" for "Buy Land & Drill New Well," which is unsupported and inconsistent with GSWC's data pertaining to cost estimates of three new well drilling options.

By contrast, DRA used "\$1,270,000" for drilling a new well, which is derived from GSWC cost estimate data for three well drilling options. When DRA used the same cost-benefit model as Exhibit 8 and inputted GSWC's own data for the three well drilling options, the result impeaches GSWC claim that building the new Rosina Plant is more cost effective than drilling a new well.

DRA does not have to disclose DRA (ALL) -16 to GSWC before impeaching Mr. Gisler's rebuttal, just as GSWC (ALL) -34 was admitted without its preliminary disclosure to DRA. This Exhibit is to prove that GSWC's Exhibit 8 in Exhibit 22 (E. Gisler's rebuttal) is biased and inconsistent with the Applicant's own data. DRA's Opening Brief will more fully explain how DRA (ALL) -16 refutes GSWC's Exhibit 8,

⁷ See Ex. 22 at 78, lls 13-17, *ref* attached Ex. 8 (E. Gisler Rebuttal).

as DRA sought to achieve during the hearing. For these reasons, DRA (ALL) -16 should be admitted to provide the Commission a full and complete record.

C. DRA’s diagram of the Overhead Allocation is admissible as “demonstrative evidence.”

“Physical evidence” is “real” or “demonstrative.” “Demonstrative evidence” is a physical object created for presentation at a hearing or trial to explain or clarify a party’s position.⁸ In this case, DRA witness M. Aslam said as much regarding the diagram he prepared to illustrate DRA’s analyses of the Overhead Allocation issue.

ALJ DE ANGELIS: And why did you decide to make this clarification?

THE WITNESS: I think that it will help this Court to understand the matter which I’m discussing a little better. I have a pictorial to add to the language, which I think is a complex issue. What I have studied is a complex issue. And I have prepared a diagram.²

Therefore, DRA requests that the Commission admit the diagram which will facilitate the Commission’s understanding of DRA’s position regarding this complex issue. It is not intended to prove the truth of any matter stated in the diagram. The Commission may give it as much weight as is appropriate, insofar as the diagram consistently reflects and illustrates the pertinent portions of the DRA Reports.

D. The “GSWC Overhead Study” at issue is already part of the record and only needs an exhibit identification number.

The “GSWC Overhead Study,” which is further identified in the document as “Overhead – R1 V07 02-08-07 Update,” can be found by that reference number in one of the three CD-ROMs that were given during the hearing to ALJ DeAngelis. As ALJ DeAngelis remarked, these CD-ROMs were filed with the Application in this matter, and

⁸ See 2 Witkin California Evid. Demo Evid sec.1 (4th Ed. 2006).

² TR. at 878, lls 6–12, M. Aslam/DRA.

therefore presumably this Exhibit is already part of the record of evidence.¹⁰ However, for ease of reference and to keep the record clear, DRA requests that this work paper be marked for identification.

III. CONCLUSION

It is only fair that the Commission admit into the record DRA (ALL) -10 and -16. These Exhibits were offered to impeach GSWC's pertinent claims as erroneous or skewed in favor of GSWC. Since GSWC (ALL) -34 was admitted as impeachment evidence even though it was offered at the last minute, analogously DRA (ALL) -10 and 16 should be admitted for impeaching GSWC rebuttal testimony. The Commission needs to hear DRA's side of the story to discern the truth. As for Mr. Aslam's prepared diagram, this is admissible as demonstrative evidence which is intended only for illustration and not to prove the truth of the matters asserted therein. The work paper, "GSWC Overhead Study, R1V07-02-08-07 Update," is presumably already part of the

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¹⁰ See TR at 717, lls. 1-2 (ALJ DeAngelis: "The CD-ROMs were submitted with the application when the application was filed.")

record, because it *inter alia* was filed with GSWC's application. It only needs a specific exhibit identification number to keep the record clear and for ease of reference.

Respectfully submitted,

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July 9, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES FOR ADMISSION INTO EVIDENCE**” in **A.07-01-009** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on July 9, 2007 at San Francisco, California.

/s/ HALINA MARCINKOWSKI

Halina Marcinkowski

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